IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No.16 of 2007 alongwith
CWPs No.30, 43, 45, 48, 61 and 243 of 2007

Reserved on : 9th March, 2007
Date of Decision: 15th March, 2007

CWP No.16 of 2007
Lokesh Gupta and others vs. State of H.P. and ors.
CWP NO.30 of 2007
Dr.Gian Chand and another vs. State of H.P. & ors.
CWP No.43 of 2007
Dr.Rometta Knawel & ors. Vs. State of H.P. & ors.
CWP No.45 of 2007
Dr.Puja Negi Vs. State of H.P. & ors.
CWP No.48 of 2007
Dr.Seema Sharma Vs. State of H.P. & ors.
CWP No.61 of 2007
Arun Kumar & another Vs. State of H.P. & ors.
CWP No. 243 of 2007
Dr.Pankaj Kumar & ors. Vs. State of H.P. & ors.

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.
The Hon'ble Mr. Justice Sanjay Karol, J.

Whether approved for reporting[1]? Yes.

For the petitioners: M/s D.Dadwal, Sanjeev Bhushan, K.D.Shreedhar, P.P.Chauhan and Sudhir Sharma, Advocates.

For the respondents: Mr.M.S.Chandel, Advocate General, for respondents No. 1, 3 and 4.

Mr.V.D.Khidtta, Advocate, for respondent No.2

For the applicants/ Respondents in (CMP No.495/2007) Mr.Ajay Mohan Goel, Advocate.

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

Sanjay Karol, J.

By this common judgment, all the aforesaid writ petitions are being disposed of together as common question of law is involved in all these writ petitions.

By way of these writ petitions, the petitioners have assailed the eligibility criteria laid in the prospectus issued by respondent No.2-Himachal Pradesh University, for the conduct of entrance examination for filling up some of the seats for post-graduate degree (MD/MS) and Diploma courses for the academic Session 2007-2009/2010. The challenge is on the ground that restricting the eligibility only for "inservice regularly appointed (HPHS-I) Himachal Pradesh Health Cadre candidates" is violative of Article 14 of the Constitution of India and that the petitioners being otherwise employed by the State of Himachal Pradesh – respondent No.1 on contract/ adhoc basis are also eligible for applying and appearing in the entrance examination to be conducted by respondent No.2.

The State of Himachal Pradesh – respondent No.1 has set up a medical college in the State of Himachal Pradesh by the name of Indira Gandhi Medical College and Hospital (for short, IGMC). IGMC is affiliated to respondent No.1 and conducts the post-graduate degree (MD/MS) and Diploma courses duly

approved by Medical Council of India. Respondent No.2 has issued an advertisement dated 24.12.2006, Annexure R/2 (page 75), informing the public at large that MCQ competitive test for admission to post-graduate degree (MD/MS) and diploma courses (allopathy) in IGMC and MDS course in H.P. Dental College, Shimla, for the session 2007-09-10 would be held on 28.1.2007. It was inter alia mentioned that inservice regularly appointed HPHS-I candidates were eligible to appear in the test. 27.12.2006 was indicated the date of availability of the prospectus and 8.1.2007 was indicated as the last date for receipt of the application forms complete in all respects in the office of Deputy Registrar (Entrance Test).

Respondent No.2 issued the prospectus, Annexure P-1 (page 15) and in terms thereof all applications are to be received on or before 8.1.2007, the entrance examination is to be held on 28.1.2007; the results are to be declared tentatively by 1.2.2007; the counseling is to commence from 28.3.2007 and the last date upto which the students could be admitted is 31.5.2007. In terms of clause 2 of the prospectus for various specialities, the University is to conduct examinations for 34 seats in post-graduate degree (MD/MS) course; 5 seats permitted by MCI yet to be recognized, 12 seats for

post graduate Diploma courses recognized by MCI; 6 seats for post graduate diploma course permitted by MCI yet to be recognized. 50 per cent of the aforesaid seats of degree and diploma courses are required to be filled in through All India Entrance Examination conducted by All India Institute of Medical Sciences or anybody nominated by the Government of India from time to time and out of the remaining 50% seats, 66.6% are required to be filled in through inservice regularly appointed (HPHS-I), HP Health Cadre candidates (hereinafter referred to as regularly appointed inservice candidates) and 33.3% seats are required to be filled in as directs seats by open competition from amongst the graduates of Medical Colleges of Himachal Pradesh (Indira Gandhi Government Medical College, Shimla and Dr.Rajendra Prashad Govt. Medical College Kangra at Tanda) or bonafide Himachalis, children of H.P. Government employees/ employee of Autonomous Bodies wholly or partially financed by H.P. Government getting admission to MBBS course through CBSE or any other All India Entrance Examination in MCI/G.O.I. recognized medical colleges in India.

Since the petitioners have challenged the eligibility criteria laid down in clause 3.5 (i) of the prospectus, for ready reference the same is reproduced hereinbelow:-

"3.5 To qualify for admission to degree or diploma courses such regular HPHS-I candidates will be eligible who:-

i) **are regularly appointed in the HPHS-I. However adhoc/ contract service followed by regular services will be counted as qualifying service for the purpose of admission.**

ii) Candidates would have completed two years in tribal/ difficult areas. Difficult areas shall be defined vide Govt. of H.P. Deptt. of Personnel Instruction No. Per(AP-C)-B(9)-1/94 dated 22.06.1999 and subsequent instructions thereof if any.

OR

iii) Have completed three years in rural areas (which may or may not include tribal/difficult areas as notified by the Govt. and applicable to the departmental candidates from time to time). Rural Area shall be the area as defined/ notified by the Government from time to time.

iv) He/she should have minimum 15 years of service left for superannuation after completion of PG Degree/Diploma course.

For the purposes of calculating continuous regular service, clause 3.6 as under:-

"3.6. The period of continuous regular service including adhoc/ contract service be calculated right from the date of **joining as HPHS-I till the last date fixed for receipt of application in the** Himachal Pradesh University."

The procedure for filing the applications for appearing in the entrance examination in so far as regularly appointed inservice candidates is concerned, is in clause 3.11, which is reproduced hereinbelow:-

"3.11 (i) **Save as otherwise provided no in-service candidate(s) will be eligible to appear in the competitive examination, if his/her application has not been routed through the Director of Health Services, HP** "alongwith service certificate. (The specimen of Certificate is attached at Appendix-4 in the Prospectus.)

(ii) Candidates applying for direct seats will have to submit an affidavit duly attested from the competent authority on non-judicial stamp paper that he/she is not in regular/adhoc/ contract service of Government of Himachal Pradesh (The specimen of affidavit is attached at Appendix-3) in the prospectus.

(iii) The candidates working on regular/ adhoc/contract basis and not possessing the requisite qualifying service as defined at 3.5 will be considered as direct candidates subject to the condition that they fulfill the conditions as laid down in 3.2(i) and further they shall have to tender resignation at the time of their selection, failing which they shall not be allowed any admission."

As all the aforesaid writ petitions, i.e. CWP No. 16 of 2007 (Dr. Lokesh Gupta & ors. Vs. State of H.P. and others), CWP No.30 of 2007 (Dr.Gian Chand and another vs. State of H.P. and others), CWP No. 43 of 2007 (Dr.Romelta Knawel vs. State of H.P & ors.), CWP No. 45 of 2007 (Dr.Puja Negi vs. State of H.P. and others), CWP No. 48 of 2007 (Dr. Seema Sharma vs. State of H.P. and others), CWP No.61 of 2007 (Arun Kumar vs. State of H.P. and ors.) and CWP No. 243 of 2007 (Dr.Pankaj Kumar and others vs.

State of H.P. and others), involve common question of law and the facts of all the petitions except CWP No. 243 of 2007, are identical, therefore, facts of only one writ petition i.e. CWP No. 16 of 2007 are given hereinbelow:-

The present writ petition has been filed by 13 petitioners and except for petitioner No.8, all are working as Registrars and Medical Officers on contract basis with the State of H.P. Petitioner No.8 has been appointed on adhoc basis by respondent No.1 and is working as Medical Officer. The petitioners have averred that except for the condition imposed in clause 3.5(i), the petitioners are fully eligible to appear in the entrance examination and that the restriction for inservice regularly appointed candidates is arbitrary, discriminatory and violative of Article 14 of the Constitution. The petitioners are in government service for more than 6 years and have served the State in rural areas also. There could not be any recruitment on regular basis, as the H.P. Public Service Commission has not conducted any test since 1999. Consequently, the stipulation contained in clause 3.5(i) is bad and that the petitioners are being deprived from applying and competing for the post-graduate courses. The Government has been renewing the contracts of employment from time to

time, thus, the petitioners are at par with that of the regularly appointed inservice candidates. It is averred that since the time between the issuance of the prospectus and the last date of submission of the applications was very short, the petitioners could not submit their applications for entrance examinations through proper channel. They have stated that the University in the neighbouring State of Punjab does not have any such condition, therefore, the respondents ought not to have imposed such a condition.

When this writ petition came up for Admission/hearing for the first time, on 4.1.2007, notice was issued to the respondents in terms of the following order:-

> "Replies shall be filed by the respondents before the next date. In the meanwhile, we permit the petitioners to apply. We direct the respondents to receive the applications of the petitioners, if submitted before the expiry of the last date, to process the applications and to permit the petitioners to take the entrance test, scheduled for 28th January, 2007. This is subject to the petitioners fulfilling all the eligibility criteria, except the criterion relating to the regularly appointed in-service candidates. The result of the petitioners, however, shall not be

> declared without the leave of this Court.
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> The aforesaid is purely provisional and at the risk and responsibility of the petitioners. This also shall abide by the result of this petition. The aforesaid permission shall not create any right in favour of the petitioners.
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> List on 7th March, 2007."

In compliance thereof, the petitioners' applications were accepted, they undertook the examinations and during the pendency of the petition, the results of all the candidates except the petitioners was declared, which is annexed as Annexure R-4 (page 92).

Such of those regularly appointed inservice candidates who had appeared and passed the entrance examination in the present writ petition, moved an application being CMP No.495/2007, seeking impleadment and permission to oppose the petition. The said application was allowed in terms of order dated 9.3.2007 and the applicants in CMP No.495/2007 were impleaded as respondents in the writ petition. The application and the reply dated 4.3.2007 filed by them alongwith the application on record, is being considered. These newly added respondents being eight in number (hereinafter referred to as private respondents) have averred that they are already in

service since long. Their date of appointments are as under:-

Name	Date of contract/ Adhoc	Date of regularization
Chaman Singh Thakur	1994	1999
Suresh Kumar	1993	1999
Sumit Dubey	2000	2000
Pankaj Gupta	1996	2000
Alok Sharma	1998	2000
Renu Rattan	-	1999
Jatinder J Kumar	1997	1998
Preeti Takkar	1999	2000

In the counter-affidavit, the aforesaid private respondents have averred that they have been appointed as regular employees after undertaking direct recruitment test through H.P. Public Service Commission in compliance of R & P Rules. The post of Medical Officer is a class-I gazetted (selection) post and they form a separate and distinct class and category in itself and cannot be equated with such of those employees who have been engaged by the State dehors the R & P Rules without undergoing any selection process conducted by the H.P. Public Service Commission. Their appointments may be due to the exigencies of requirement determined by the State purely on contractual basis. The services of the contract/ adhoc employees are purely at the pleasure

of the Government terminable by either side after giving one month's notice. The regularly appointed inservice candidate is to be treated on duty while undergoing the said course and is paid all pays and allowances. On the other hand, a direct candidate has to pay for undergoing this course and a regularly employee after completion of course is bound to and actually does serve the State backdoor as a post-graduate doctor. In any case, the petitioners are duly entitled to and eligible to compete for admission as a direct category candidates. The petitioners as on the date of receipt of the applications were not eligible, consequently, any subsequent development with regard to regularization would have no effect.

No reply has been filed by respondent No.2. Respondents No.1 (State of H.P.), 3 and 4 have filed reply dated 6.3.2007 stating that vide memorandum dated 5.3.2007, the government has regularized the services of the petitioners appointed on adhoc/contract basis. However, as on the date of submission of the applications, the petitioners were not regularly appointed GDOs.

During the course of hearing, counsel for the petitioners wanted to rely upon an averment made in para 11 of the reply filed by the State, wherein it has been stated that the relief prayed for by the

petitioners has been meted out to them. The learned Advocate General clarified that there seems to be an error and the fact of the matter is that the petitioners were not eligible as on the date of submission of the applications. The eligibility criteria laid down is to serve public purpose and in public interest.

We have heard S/Shri K.D.Shreedhar, D.Dadwal, Sanjeev Bhushan, P.P.Chauhan and Sudhir Sharma, learned counsel for the petitioners, learned Advocate General, for respondents No.1 (State of H.P.), 3 and 4, Mr.V.D.Khidtta, learned counsel for respondent No.2- University and Shri Ajay Mohan Goel, learned counsel for private respondents. They have canvassed the issues raised by them in their pleadings. The counsel for the petitioners have also impressed that during the pendency of the writ petition vide memorandum dated 5.3.2007 respondent No.1 has taken a decision to regularize 398 doctors, who were with the Government on contract/ adhoc basis. Therefore, in any event the petitioners services being now regularized they fulfill the eligibility criteria laid down in clause 3.5 (i) and that since they have been allowed to participate in the entrance examination, in the event of they being declared successful they be allowed to be admitted in the respective courses in order of merit.

In support of his case Shri Dushyant Dadhwal, learned counsel for the petitioners has relied upon the decisions in **Dr.B.N.Vijayanarasimha** v. **State of Karnataka and others**, reported in AIR 1990 Kart. 359, **Charles K. Skaria and others** v. **Dr.C.Mathew and others**, AIR 1980 SC 1230 and **Meenakshi Malik** v. **University of Delhi and others**, AIR 1989 SC 1568.

Learned Advocate General appearing for the State has sought to rely upon a decision of this Court in **Jagpal Singh Pandher** vs. **State of H.P. and others**, CWP No.1343/2001, decided on 3.5.2002, which according to him squarely covers the entire issue in the present writ petition. Shri Ajay Mohan Goel, learned counsel for the respondents has sought to rely upon the decisions in **State of MP and another** vs. **Dharam Bir**, reported in (1998) 6 SCC 165, **Union Public Service Commission** v. **Girish Jayanti Lal Vaghela and others**, reported in (2006) 2 SCC 482, **Dolly Chhanda** vs. **Chairman, JEE and others**, reported in (2005) 9 SCC 779.

We proceed to deal with the issues raised as under:-

It is a settled law that the Government, which bears the burden of running the medical colleges is entitled to lay down the criteria for eligibility and cannot be denied the right to decide

from what sources the admission will be made. The eligibility is a question of policy and depends inter alia on an overall assessment of survey of the requirements of residents of the territories and other categories of persons for whom it is essential to provide facilities from medical education. The Government is entitled to lay down the sources from which selection of admission would be made. If the sources are properly classified on reasonable basis it is not for the Courts to interfere with the manner and the method of making the classification. **[Kumari Chitra Ghosh and another vs. Union of India and others, (1969) 2 SCC 228, D.N.Chanchala vs. State of Mysore, (1971) 2 SCC 293, K.Duraisamy and another vs. State of Tamil Nadu and others, (2001) 2 SCC 538].**

Article 14 forbids class legislation but does not forbid reasonable classification, which is based on reasonable and intelligible differentia having rationale basis. The relevant factors for considering the constitutionality must be judged on the fact that there is presumption of constitutionality, burden of proof is heavy upon the petitioners and hardship of the petitioners cannot be the basis for determining the constitutionality of the statute. [(**Saurabh Chaudri and others vs. Union of India and others, (**2003) 11 SCC 146)]

Further in **Pre-PG Medical Sangarsh Committee and another** vs. **Dr.Balrang Soni and others**, reported in (2001) 8 SCC 694, it has been held that the Government possesses the right and authority to decide from what sources the admissions in educational institutions or to a particular disciplines and courses therein have to be made and that too in what proportion. It has further been held, that "It is permissible for the Government to fix such a source or classification of candidates from which selection for admission to the postgraduate colleges in the State had to be made for yet another genuine, relevant and reasonable cause and purpose, which has, in our view, sufficient nexus with the larger goal of equalization of education opportunities and to sufficiently prefer the doctors serving in the various hospitals run and maintained from out of public funds by the Government or government departments, in the absence of which there would be serious dearth of qualified postgraduate doctors and experts to meet the requirements of such hospitals run by the State and State departments, the only avenue open for treatment of the large body of the ordinary common man, all over the State. This larger public interest, unlike reservations, envisaged for SC/ST with a different and laudable purpose to assist educationally backward classes, is

a distinct and vitally important public purpose in itself absolutely necessitated in the best of public interest". ……"The doctors, who are inservice candidates in various medical institutions run and maintained by the Government or government departments, have wide area and horizon of exposure on the practical side".

Inservice candidates on attaining higher academic achievements would be available to be posted in rural areas by the State Government. [**State of MP and another vs. Gopal D.Tirthani and others**, (2003) 7 SCC 83].

Classification must be founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must appear a just and rationale relation to the object sought to be achieved. Classification is primarily for the legislature or for the statutory authority charged with the duty. If the classification is found to rest on reasonable basis it has to be upheld. In order to establish that protection of equal opportunity clause has been denied, it is not enough for the parties challenging the same, to say that they have been treated differently from others, not even enough that a differential treatment has been accorded to them in comparison with others similarly

circumstanced. The discrimination is essence of the classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis. [**State of Jammu and Kashmir vs. Tirloki Nath Khosa (C**onstitution Bench**),** AIR 1974 SC 1.

In **Mohan Kumar Singhania and others** vs. **Union of India and others**, (1992) Suppl.(1) SCC 594, it has been held:-

> "Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The cherished principle underlying the above article is that there should be no discrimination between one person and another if as regards the subject matter of the legislation, their position is the same (vide *Chiranjit Lal Chowdhuri vs. Union of India, (AIR 1951 SC 41)* or in other words its action must not be arbitrary, but must be based on some valid principle, which in itself must not be irrational or discriminatory (vide *Kasturi Lal Lakshmi Reddy v. State of J&K ((1980) 4 SCC 1).* As ruled by this Court in *Ameerunissa Begum v. Mahboob Begum (AIR 1953 SC 91),* and *Gopi Chand v. Delhi Administration (AIR 1959 SC 609),* that differential treatment does not per se constitute violation of Article 14 and it denies equal protection only when there is no rational or reasonable basis for the differentiation. Thus Article 14

> condemns discrimination and forbids class legislation but permits classification founded on intelligible differentia having a rational relationship with the object sought to be achieved by the Act/Rule/Regulation in question. The Government is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not scientifically be perfect or logically complete. As observed by this Court more than once, every classification is likely in some degree to produce some inequality."

Legal relationship between the Government and its servants is something entirely different, it is much more than a purely contractual relationship and is in the nature of 'status'. Whether a person holds a particular post in a substantive capacity or is only temporary or adhoc is a question which directly relates to his status depending upon the terms of appointment and it is not open to any government employee to claim automatic alteration of status unless that result is specifically envisaged by a statutory provision and a government employee cannot claim a status different from what has been conferred upon him at the initial or subsequent stage of service. [**State of MP and another** vs. **Dharam Bir,** reported in (1998) 6 SCC 165].

Appointment to a post under the State can only be made in accordance with law. [**Union Public Service Commission,** (supra)]

The norms and procedure in prospectus issued for admission to the educational institutions have to be complied with strictly by the authorities concerned and condoning defects in the application by the authorities and allowing the candidates to rectify the same after the last date of receipt of applications is illegal. [**Gunjan Kapoor** vs. **State of H.P. and others,** 1999 (1) Sim. L.C. 246].

We are of the view that the object to facilitate and ensure the upgradation of existing knowledge and skill of regularly appointed inservice HPHS-I doctors whose services as experienced post-graduate doctors shall be utilized in the rural/tribal areas anywhere in the State for providing proper medical service to the public at large is noble and justified. Keeping in view the object of the policy, the purpose which is sought to be achieved and also the various judicial pronouncements and the principles of law stated above as also for the subsequent reasons, the adhoc/contract employees cannot be equated and compared with regularly appointed inservice candidates/doctors appointed in HPHS-I cadre through

the Public Service Commission in compliance with the R & P Rules.

The post of the Medical Officer is class-I gazetted (Selection) post, which post is filled in 100% by way of direct recruitment through H.P. Public Service Commission. The petitioners have been appointed on contract/ adhoc basis through backdoor without following the process of recruitment of medical officer, which includes selection through H.P. Public Service Commission and appointment on the recommendation of the H.P. Public Service Commission in accordance with R & P Rules. The employment of the petitioners is on contract/ adhoc basis and is strictly governed by the terms and conditions of the contract entered into between them and the State unlike the private respondents, who are regular employees appointed after proper selection through the H.P. Public Service Commission in accordance with the R & P Rules. The fact that the petitioners have served in the rural areas in itself cannot be a ground for equating themselves with the private respondents. Being regular employee is a pre-condition to be eligible to compete as HPHS Officer which condition is rationale and valid. Regular employees of the department are a class in itself and there is a distinction between regular employee appointed as per R & P Rules and a contract employee

appointed de hors the R & P Rules. Even though the private respondents were initially appointed on contract/adhoc basis, they have now been regularized and have become regular employees of the State on being appointed on the recommendation of the H.P. Public service Commission. The HPHS-I officer is treated to be on duty while undergoing the said course and is paid all the pays and allowances, on the other hand a direct candidate has to pay for undergoing this course. The employment of a regular employee is continuous while he is undergoing the course because he is admitted as inservice candidate. Contract/adhoc employee cannot say so because the terms of his employment is fixed and lapses unless renewed with the end of the contract. The effect of the petitioners being declared as inservice candidates would be that they would be treated at par as regularly appointed inservice candidate for admission to postgraduate courses and do their course while being paid with no riders, restrictions or rigors that of a regular employee. The petitioners being in job on contract or adhoc basis without undergoing procedure laid down in R & P Rules is purely fortuitous. Simply because no test has been conducted for regular recruitment in the HPHS Cadre by the H.P. Public Service Commission cannot be a reasonable ground for challenge in the present

circumstances. The petitioners may or may not have qualified in the selection process.

In Clause 3.5(iv) the State has imposed a condition that even amongst the regularly appointed inservice candidates only those Doctors would be eligible to appear and compete for post-graduation examination, who have alteast 15 years of service left after completion of course. Services of regular employees cannot be terminated except in accordance with R & P Rules.

The petitioners initially have been appointed on contract basis for a period of one year or till the regular incumbent is recommended/selected by the Service Commission, whichever is earlier. Even though their contracts are being renewed from time to time, however, a perusal of their terms of appointments/ renewals clearly stipulate that appointment shall not confer any right of continuation, seniority and confirmation; service of such persons can be terminated on either side by giving one month’s notice or one month’s salary in lieu thereof except in case of bonded candidates, who also can resign after refunding the bonded amount. Being a contract employee, he cannot be transferred from the place of his posting (Page 102 – 104 of CWP No.16/2007).

The State wants that the benefit of higher education to doctors should reach the masses particularly in rural areas, which can reach only through regularly appointed doctors, who are bound to serve anywhere in the State till superannuation, unlike direct candidates, who have no rigors of length of service. As such all those employees who have been recruited through the process provided under R & P Rules form a separate and distinct class and has an intelligible differentia based on the mode of employment and terms of future service which has a nexus with the object to be achieved, which is to prepare post-graduates for rendering better health services to the public at large in the State.

The question as to whether the services rendered by the petitioners on contract/adhoc basis can be counted as qualifying service for making them eligible as inservice regularly appointed HPHS-I cadre candidates is in fact no longer res integra.

A Division Bench of this Court in **Jagpal Singh Pandher** (supra), in almost similar circumstances and on the same pleas which are being canvassed before us in these writ petitions has already rejected the contentions and upheld the validity of somewhat similar clause as stipulated in clause 3.5(i) (supra). After examining the relevant provisions of the H.P. Civil Medical Service (General

Wing) Rules, 1995 in detail, the Court held that services rendered by the petitioners therein on contract basis cannot be counted as qualifying service to make the petitioners therein eligible for undertaking the entrance examination for post-graduate degree/diploma courses for the session 2001-03/04.

The Division Bench while relying upon the decision in **K.Madhavan and another** vs. **Union of India and others**, reported in (1987) 4 SCC 566, wherein it has been held that a person appointed to a post purely on temporary or on an adhoc basis , the appointment is not on a regular basis and that the expression regular basis in contra-distinction of appointment of adhoc/ stop gap or temporary basis, held as under:-

> "In view of the dicta of law laid down in the aforesaid decision, the expression in-service regularly appointed HPHS-I Himachal Pradesh Health Cadre incorporated in Clause 3.2 Group-B, of the prospectus would mean the appointment to the post on a regular basis in contradistinction to the appointment on adhoc or stopgap or purely temporary basis. The petitioner does not satisfy the eligibility test of clause 3.2 Group 'B" and his application to appear for admission to post graduate Degree/Diploma course in our view has been rightly rejected by the respondents."

The plea of the petitioners that during the course of the pendency of the writ petition they have become eligible to appear and compete in the entrance examination by virtue of the memorandum dated 5.3.2007, wherein their services have been regularized by the State, is untenable in law for the reason that in **Charles K.Skaria** (supra) (AIR 1980 SC 1230), it has been held that "Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second." …….."To make mandatory the date of acquiring the additional qualification before the last date for application makes sense", and in **Dolly Chhanda** (supra), [(2005) 9 SCC 779], it has been held that "the general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed".

The memorandum dated 5.3.2007 relied upon by the petitioners, conferring status of a regular employees is prospective and subject to compliance of certain formalities mentioned therein. Clauses 3.5 and 3.6 (supra), specifically state that the period of continuous regular service has to be calculated till the last date fixed for the receipt of the application. Admittedly, as on 8.1.2007 being the last date of submission of applications, none of the petitioners were in regular appointment in HPHS-I cadre of the State of H.P. Since they were not eligible and their applications could not have been entertained, some of the petitioners in CWP No. 243 of 2007, choose to directly apply in the open general category. The facts of these petitioners is different only to this extent. They were conscious of the fact that right from the date of issuance of the advertisement till the last date of the receipt of the applications they were not eligible and consequently did not even route their applications in terms of clause 3.11 of the prospectus. The eligibility for admission to a course as per advertisement and prospectus is to be seen vis-à-vis the date of eligibility mentioned in the advertisement or prospectus, which has the force of law. Subsequent development cannot alter their status for the purposes of admission. The prospectus

is clear and unambiguous. It is also not the case of the petitioners that they would be loosing the chance to appear and compete in future to undertake the post-graduate degree/diploma courses. In any case they could have and in certain cases have actually appeared as direct candidates in general category. In any event, statute cannot be assailed on sympathetic considerations or individual hardships. We also note that two of the private respondents, who have been selected on merits, would become ineligible to appear and compete in future in terms of stipulation 3.5(iv) of the prospectus.

In terms of the order dated 4.1.2007 (supra), the petitioners' applications were directed to be processed, but, however, it was clarified that it would not create any right in favour of the petitioners.

The plea of the petitioners that the time gap between the date of issuance of the prospectus and the filing of the applications is short is unacceptable. The eligibility criteria restricting only regularly appointed inservice candidates for some of the seats has been in vogue in the State of Himachal Pradesh since long. The applications of the petitioners is in violation of the terms of the prospectus could not be entertained.

It is also a well settled that prospectus has force of law and strict compliance of the provisions thereof has to be adhered to, non-compliance of any of the provisions thereof would render the applications defective making the petitioners ineligible to compete. [(2005) 9 SCC 779]. We have seen that the petitioners' appointment on contract/ adhoc basis is of the year 2000, whereas the private respondents have been appointed and regularized between 1994 and 2000.

A plea has been raised that the Universities of the neighbouring State of Punjab are not having similar eligibility criteria. In the State of Himachal Pradesh, prospectus is prepared every year on the recommendations of duly constituted Prospectus Review Committee consisting of Director Medical Education, Addl./Joint Controller of Examinations, H.P. University, Principal, IGMC, Shimla and the Addl/ Dy.Director (Admn.) and subsequently the prospectus after preparation by the Review Committee is approved by the State Government. The prospectus issued by an authority of an adjoining State cannot have any persuasive much less authoritative value. It is prepared keeping in view the specific requirements and conditions prevailing and necessitating laying of eligibility criteria in the prospectus.

An effort has been made by the petitioners to distinguish the judgment and the ratio laid down in **Jagpal Singh Pandher's** case (supra), on the ground that no test for regular appointment has been conducted by the H.P. Public Service Commission since 1999. We have already held that this cannot be a ground for assailing the eligibility criteria. It is not the petitioners' case that they are otherwise not eligible to compete in the open category. Further attempt has been made to distinguish the judgment on the ground that the decision does not lay down any ratio of law for it be a binding precedent. A distinction is sought to be made on the ground that the Cabinet had taken the decision to regularize the services of the petitioners on 7.11.2006. We have already discussed the judgment and in our view it lays down the ratio of law. The decision of the Cabinet till such time it is notified does not become operative conferring any right on any person.[**J.P.Bansal** vs. **State of Rajasthan and another**, (2003) 5 SCC 134.] The petitioners whose services now stand regularized can avail their chances in future.

The decision cited by Mr. Dadhwal, learned counsel for the petitioners are not applicable and are clearly distinguishable.

Dr.B.N.Vijayanarasimha, (supra) was a case where the Government of Karnataka under Karnataka Medical College and Dental Colleges (Selection and Admission to PG Course) Rules, 1987 issued notification notifying the seats for admission from the inservice candidates only in the service of Government of Karnataka, thus, earmarking all the seats of Super Speciality courses to inservice candidates alone. In these circumstances, the Court quashed the notification. In the present case, it is not in dispute that the petitioners can compete in the general category and that there is no total 100% reservation for regularly appointed inservice candidates for all the seats advertised by respondent No.2.

Charles K. Skaria (supra) was a case where reservation was only to the extent of 2% of the total seats, and the challenge was for the reservation, which was found to be extremely arbitrary. In the instant case, there is no challenge to the reservation but only to the eligibility criteria laid in the prospectus.

Meenakshi Malik (supra) was a case where condition of eligibility criteria that students should have received last 2 years of education in a school of Delhi for qualifying a candidate appearing for entrance examination for admission to medical

college in Delhi was held to be unreasonable and applicable in the case of those candidates who were compelled to leave India for foreign country by reason of the posting of the parent by the Government to such foreign country. Thus, in the peculiar facts of the case the Court interfered and granted relief.

No other point was urged by the learned counsel for the parties.

For the foregoing reasons, all the writ petitions are dismissed. Interim order dated 4.1.2007 shall stand vacated and CMP No. 24 of 2007 in CWP No. 16 of 2007, is accordingly dismissed.

All the Misc. applications in the aforesaid writ petitions are also dismissed.

(V.K.Gupta),
Chief Justice

(Sanjay Karol)
Judge

March 15, 2007
(C)